Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Implementation of Section 255 of the	)	
Telecommunications Act of 1996	)	
	)	WT Docket No. 96-198
Access to Telecommunications Services,	)	
Telecommunications Equipment, and	)	
Customer Premises Equipment	)	
By Persons with Disabilities	)	

COMMENTS OF PACIFIC TELESIS GROUP

R. MICHAEL SENKOWSKI
ERIC W. DESILVA

WILEY, REIN & FIELDING
1776 K Street, N.W.
Washington, D.C. 20006
(202) 429-7000

MARLIN D. ARD
LUCILLE M. MATES
BETSY S. GRANGER

140 New Montgomery Street
Room 1526
San Francisco, California 94105
(415) 542-7654

Attorneys for Pacific Telesis Group

Date: October 28, 1996

TABLE OF CONTENTS

SUMMARY

Pacific Telesis Group supports Congress's and the Commission's goal of ensuring that the benefits of choice in advanced telecommunications are available to all Americans. Within our own organization we have instituted procedures to build access and use capabilities into new products and services by adhering to Universal Design principles and by establishing a continuing dialogue with consumer advocacy groups for individuals with disabilities. Our experiences demonstrate that a process-oriented compliance framework for Section 255 will provide better, more functional accessibility features, broader choices for all consumers, and lower costs for manufacturers, telecommunications providers, and individuals with disabilities.

The need for a process-oriented approach is dictated by the complex interrelationships within the telecommunications network as well as the rapid pace of technological change in the industry. Rigid service, product, or disability specific rules will soon become outmoded and may eventually act to stifle technological innovations that benefit Americans with disabilities. A case-by-case approach, on the other hand, offers the ability to deal with these complex judgments on an evolutionary basis.

As the Commission struggles with defining the scope of Section 255, it must consider the overall goal of ensuring the efficient provision of a broad menu of capabilities and choices for the community of individuals with disabilities. To effectuate this goal, we believe the Commission's resolution of the coverage issues in Section 255 should encourage the availability of a variety of product choices for consumers with disabilities at different pricing and feature levels. The Commission's definitions should also recognize that accessibility and

use of telecommunications products and services is a shared responsibility. Thus, the policies adopted under Section 255 must influence decisionmaking throughout the chain of manufacture and deployment if real improvements for consumers with disabilities are to be realized.

The uniqueness of the telecommunications industry also impacts Section 255 to the extent that the law relies heavily on concepts originally created for the architectural context of the Americans with Disabilities Act ("ADA"). Some of these concepts, such as the emphasis in the ADA on individualized accommodations, are not as relevant in a telecommunications environment where services are more generic. At the same time, many of the ADA principles illuminating the interpretation of "readily achievable" can be modified easily to address the provision of telecommunications services and equipment.

We also concur with the Commission that existing complaint procedures are well-adapted to ensure compliance. Specifically, we advocate using a combination of guidelines, documentation requirements, and the Section 207 and Section 208 complaint procedures to ensure the goals of Section 255 are achieved. Process-oriented guidelines, developed by the FCC in conjunction with the Access Board, are essential as a starting point for companies to begin critical thinking about access and use issues. Recognizing the pace of technology, however, these guidelines should be updated every five years through a process that includes the Access Board, industry, and consumer advocacy groups. The Access Board can assist companies in their efforts to comply with Section 255 by providing continuing industry updates and examples of excellence in achieving access and use solutions.

To guide companies' efforts, stimulate new approaches to access, and increase the amount of available information on accessibility, we also advocate a documentation

requirement. Specifically, we urge the Commission to adopt a system of self certification relying on a Document of Conformity and an associated Consumer Accessibility Impact Report. These documents will provide a "paper trail" that allows consumers, and "downstream" integrators and manufacturers, to know what accessibility features are and are not supported. This, in turn, will allow more informed choices about the impact of such product decisions on access and use.

As a final matter, we believe that the existing procedures used for Section 207 and Section 208, with some minor modifications, can serve to enforce Section 255. The Commission's existing policy of encouraging informal resolution of complaints will be especially applicable to complaints arising under Section 255. We recognize that the Commission's jurisdiction under Sections 207 and 208 is limited to carriers and, accordingly, parallel procedures are needed to ensure that cases raising issues implicating both manufacturing and service provision can be dealt with efficiently. Finally, we advocate formalizing an alternative dispute resolution mechanism into the Commission's rules by providing for an industry and consumer group to review complaints filed under Section 255. This committee would have the flexibility to mediate disputes informally; offer suggestions to the Commission on resolving the complaint, if the matter is company-specific; or to refer industry-wide issues to the Access Board or other fora as appropriate.

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Implementation of Section 255 of the Telecommunications Act of 1996	)	
	)	WT Docket No. 96-198
Access to Telecommunications Services, Telecommunications Equipment, and Customer Premises Equipment By Persons with Disabilities	)	

COMMENTS OF PACIFIC TELESIS GROUP

Pacific Telesis Group ("Pacific") herewith submits its comments on the Notice of Inquiry in the above-captioned proceeding.[1] In this NOI, the Commission seeks comment on developing rules and policies to ensure that all Americans share in the benefits of increased competition and consumer choice, as mandated by Section 255 of the Telecommunications Act of 1996.[2] As discussed below, we strongly support the Commission's goal of facilitating access to critical telecommunications tools by Americans with disabilities. To achieve this goal, we believe that the resolution of definitional issues in Section 255 must recognize both the complex interrelationships in today's "network of networks" and the rapidly changing nature of telecommunications. If the scope of Section 255 can be clearly delineated, we submit that the existing complaint procedures, with only minor modifications, are an

---

[1]Implementation of Section 255 of the Telecommunications Act of 1996, WT Docket No. 96-198 (Sept. 19, 1996) ("NOI").

[2]Telecommunications Act of 1996, Pub.L. 104-104, 110 Stat. 56 (1996); 47 C.F.R §255 (1996).

appropriate vehicle to ensure that the access and use policies of Section 255 are fully and fairly discharged.

I. INTRODUCTION

Section 255 of the *Telecommunications Act of 1996* continues the efforts of Congress to eliminate day-to-day discrimination against Americans with disabilities. Starting with the passage of the *Hearing Aid Compatibility Act of 1988* ("HACA"),[3] which required the FCC to implement regulations to ensure the compatibility of certain telecommunications equipment with hearing aid devices, and continuing through the *Americans with Disabilities Act of 1990* ("ADA"),[4] which implemented physical structure compliance guidelines regarding, among other things, installation of telephones, Congress has attempted to ensure the availability of certain telecommunications features and functions for individuals with disabilities. Now, with the passage of Section 255, Congress has sought to ensure access to and use of all telecommunications services and products by individuals with disabilities.

More specifically, Section 255 addresses both telecommunications equipment and telecommunications services, stating:

> (b) A manufacturer of telecommunications equipment or customer premises equipment shall ensure that the equipment is designed, developed, and fabricated to be accessible to and usable by individuals with disabilities, if readily achievable.

---

[3]See, generally, Hearing Aid Compatibility Act of 1988, Pub.L. 100-394, 102 Stat. 976 (1988); 47 U.S.C. §610 (1995).

[4]Americans with Disabilities Act, Pub.L. 101-336 §2, 104 Stat. 327 (1990).

> (c) A provider of telecommunications service shall ensure that the service is accessible to and usable by individuals with disabilities, if readily achievable.

Section 255 also states that "[w]henever the requirements of subsections (b) and (c) are not readily achievable, such a manufacturer or provider shall ensure that the equipment or service is compatible with existing peripheral devices or specialized customer premises equipment commonly used by individuals with disabilities to achieve access, if readily achievable."[5]

The NOI is the beginning of the Commission's efforts to discharge its important duties under Section 255. This broad inquiry seeks comment on how the relevant terms within Section 255 should be defined, what policies and procedures need to be altered to effectuate the intent of Section 255, and, more generally, the current level of access to, and use of, telecommunications by Americans with disabilities. As discussed below, Pacific strongly supports measures to ensure that customers with disabilities have access to a full and rich menu of products and services meeting their telecommunications needs.

II. THE BENEFITS OF ADVANCED TELECOMMUNICATIONS SHOULD NOT BE DENIED TO AMERICANS WITH DISABILITIES

A. Pacific Strongly Supports the Goal of Ensuring that Telecommunications Services and Products Are Available to All Americans

Pacific strongly supports the Congress's and the Commission's goal of ensuring that all Americans, regardless of disabilities, are able to benefit from advanced telecommunications

---

[5]47 U.S.C. §255(d).

services. Telecommunications services are critical for both social interaction and business needs. Denying any individual access to the range of telecommunications tools needed to increase productivity in the workplace, provide access to needed information, and improve the quality of leisure time at home effectively relegates that individual to a secondary status in modern society. For individuals with disabilities facing already difficult challenges due to functional limitations and prejudice, the lack of access to telecommunications services can foreclose their ability to lead a socially rewarding and productive life.

We at Pacific have attempted to rise to the challenge of assuring access to telecommunications services and equipment by those with disabilities. We maintain a Deaf & Disabled Services business group in Pacific Bell to assist individuals with disabilities in meeting their communications needs, as well as to assist us in understanding and deploying services and equipment that are usable by the widest range of customers, whether disabled or not disabled. In 1993, we also initiated an Advisory Group for People with Disabilities ("AGPD") to meet with product managers and officers and share ideas about accessibility for people with disabilities. Even after the AGPD issued its report in 1994, the AGPD has continued to provide valuable insights on a continuing basis, convening annually and providing us with constructive feedback on our development processes. At the federal level, we are also actively participating on the Telecommunications Access Advisory Committee ("TAAC"), founded by the Access Board to assist in developing guidelines for equipment under Section 255 of the Telecommunications Act of 1996.

Perhaps most importantly for the future of accessibility, we have explicitly incorporated process-oriented Universal Design policies into our product design tools. Adherence to the principle of Universal Design is ensured by:

- Incorporating universal design into the product development process from the beginning, and throughout the process.
- Requiring product developers to use the resources and skills of our Human Factors Engineering as a critical step in the design and development of all new products.
- Adding both staff and training capabilities to Human Factors in order to provide the necessary expertise to product managers on functional design requirements for people with disabilities.
- Developing practical, workable "filters" in Human Factors that can be applied at all critical phases of product development.
- Requiring the appropriate leaders of product development to ensure that "filter questions" related to specific disabilities be analyzed and answered for every new product we develop.
- Including people with disabilities in the beginning and test phases of all new product designs.
- Directing our vendors (CPE, telecommunications equipment) to address specific issues of functional access for customers with disabilities as part of their contractual arrangements.
- Adhering to open architecture principles to ensure compatibility with other vendors' accessibility solutions.
- Designing products to work with other vendors' accessibility solutions by conforming to and using toolkits that support standard interfaces.
- Finally, supporting national efforts underway to develop solutions for universal access.

Thus, for example, in assessing product opportunities, managers are explicitly called upon to consider, among other factors, the differences between customer needs in segments of

the market, including the segment of customers with functional limitations; how Universal Design, including designing for customers with functional limitations, could expand the market; and, how the technology will support customers with functional limitations. In this manner, as new services and products -- and new generations of existing services and products -- are implemented, access and use by those with disabilities is provided to the greatest possible degree.

Our experience with deploying Caller ID provides an example of how these principles can work. Because people with disabilities were included throughout the product development process, specifications were included to meet the needs of customers with significant visual impairments. Thus, when the Caller ID service was offered to the general public, we also offered a subsidized "talking" adjunct for customers who, because of a visual disability, needed voice output to use the service. While the discounted adjunct product cost is not part of our Universal Design policy, we believed that all customers should have access to services and recognized that cost can often be a determining factor for access. As part of the product design process, we did investigate implementing "talking" Caller ID as a network function. Our approach of designing in access from the beginning allowed a rational balancing of cost, efficiency, and other factors that ultimately culminated in a decision to incorporate access for individuals with visual impairments using customer premises equipment.

Similarly, Pacific Bell Internet also worked with Universal Design concepts in launching new Internet access services. When working with vendors, Pacific Bell Internet prioritized finding software that could provide a text only mode to assist customers with visual impairments in participating in the Internet information revolution. Over the development

period, however, screen readers that also worked with Windows™ software were introduced and people with visual impairments began utilizing these packages, creating different development issues. Fortunately, individuals with visual impairments were included in the beta test of the product, compatibility issues with new screen readers were identified, solutions are being tested, and compatible interfaces should be in place in the near future.[6]

B. Pacific's Experience with Telecommunications Access Issues Highlights the Importance of Process-Oriented Compliance with Section 255 Goals

Through our experiences, we cannot emphasize enough the importance of addressing disability access issues as a part of the design process. At the design level, products and services can easily be evaluated for compliance with Section 255 goals. Throughout this process, necessary modifications and specifications can be engineered to address access and use issues or, in some cases, rational decisions can be made that accommodations for a particular type of functional limitation are not, at that time, "readily achievable." In some cases, even if immediate solutions are not readily achievable, the mere identification of the issue can stimulate plans for overcoming the access barrier in second-generation products and services, and even lead to commitments by the provider to ensure compatibility for second generation products.

---

[6]In this regard, we note that our solutions have not eliminated barriers to full use of the Internet. Even when access can be provided, users with visual impairments face significant barriers as a result of inaccessible web page design. Although we plan to co-sponsor a forum in the first quarter of 1997 to address this issue, we do not believe that common carrier providers should be held responsible for access issues that result from information content not within their control.

On the other hand, attempting to engineer *post hoc* access and use "solutions" for end-stage, or already deployed, products or services will almost invariably require retrofitting, delays in bringing the products or services to market, less functional access modes, interim solutions, and, generally, much greater overall cost. Thus, as stated by the Executive Vice President for Pacific Bell's Regional Markets Group, "designing in access is more cost efficient than retrofitting products later and will lead to better designed products which can give companies a competitive advantage."[7]

III. THE FCC'S RESOLUTION OF DEFINITIONAL ISSUES IN SECTION 255 MUST RECOGNIZE THE COMPLEX INTERRELATIONSHIPS WITHIN TODAY'S "NETWORK OF NETWORKS" AND THE RAPID PACE OF TECHNOLOGICAL CHANGE

In the NOI, the Commission seeks comment on interpreting the key language in Section 255. As discussed below, we believe that the resolution of these definitional issues must recognize the complex interrelationships within today's communications network, including the interdependence between manufacturing and service provision in the context of telecommunications. Moreover, the rapid pace of technological change in telecommunications virtually dictates that the Commission adopt a forward-looking, process-oriented compliance model. In sum, the way that the Commission interprets the definitional issues in Section 255 must allow it broad flexibility to recognize legitimate needs, identify optimal solutions amidst

[7]Pacific Bell's Advisory Group for People with Disabilities, Pacific Telesis (June 1994).

complex interactions in a rapidly changing environment, and thus fully effectuate Congressional intent.

A. The Equipment Coverage Policies Adopted Under Section 255 Must Allow Access and Use Policies To Be Realized In the Most Efficient Manner

While network equipment and customer premises equipment ("CPE") both play a role in ensuring that Americans with Disabilities have access to, and use of, a broad range of telecommunications products and services, CPE plays a dominant role. Because it is the physical manipulation of CPE that literally allows "access" to the network of networks, affecting the process of CPE design is critical to realizing access and use goals. Moreover, CPE advancements and turnover occur far more rapidly than network hardware upgrades, which means that access solutions implemented through CPE can generally be provided faster. While network-based improvements -- and especially the introduction of new network capabilities -- can also assist in ensuring that telecommunications offerings meet the needs of consumers with disabilities, "telecommunications equipment" compatibility issues are significantly different than the questions raised in the CPE context. In any event, however, the policies adopted with respect to both CPE, telecommunications equipment, and services must promote the most efficient realization of access and use goals.

1. The Commission's Policies Should Encourage the Availability of a Rich Menu of Options for Individuals with Disabilities

In defining the coverage of Section 255 over equipment that can be used with both telecommunications and other services, the Commission must consider the rapid pace of

change within the industry and seek flexible solutions that will not only prove efficient, but also endure. Specifically, we urge the Commission to consider how consumer equipment is evolving in order to construct regulatory paradigms that ensure, on a continuing basis, a broad menu of choices for consumers with disabilities.

As with different sectors of the business and consumer population, the requirements of individuals with disabilities will vary considerably. As an initial matter, features that facilitate access by helping to overcome one type of functional limitation may, in fact, impose additional barriers for individuals with a different type of disability. Beyond that, however, individuals with disabilities have different functional requirements for equipment and differing capability needs suited to their vocations or avocations, just like other types of consumers. As a result, the Commission should exercise care to avoid creating incentives for some companies to incorporate access into only the lowest (or highest) cost products. Such products may purport to meet all access needs while, in reality, meeting none. The Commission's policies should also avoid limiting consumers with disabilities to achieving access only through costly, specially designed assistive technology. Instead, the Commission's policies should encourage the integration of a broad menu of capabilities into feature rich product ranges that offer flexibility and choice for consumers with disabilities at varying levels of price and functionality.

The danger of creating a second class tier of products is especially threatening given present trends toward more integrated products. We believe that, as technology becomes smaller and more portable, devices will emerge that combine a variety of functions. Examples include products like wireless e-mail readers/notetakers and PCS devices integrated with

personal schedulers. As standalone equipment becomes a smaller percentage of the market, it is imperative that the Commission ensure combination devices also meet accessibility and use goals.

2. "Telecommunications Equipment" Policies Should Encourage Deployment of Equipment with Features, Functions, and Capabilities Supporting Access

With regard to telecommunications equipment, we believe systems deployed by service providers should, at a minimum, not prevent customers from using access features found in commonly used CPE. Telecommunications equipment manufacturers should be aware of existing requirements and be required to disclose relevant compatibility information to their customers, *i.e.*, to service providers and product integrators. Service providers can then be responsive to customer needs and avoid deploying services that compromise accessibility standards. However, without information regarding the ability of telecommunications equipment to meet accessibility standards, service providers' task in ensuring access is made exceedingly difficult.

In this regard, the Commission has also asked commenters to address the relationship of Section 251(a)(2) of the Act, as added by the Telecommunications Act of 1996, to Section 255. Section 251(a)(2) of the Act "imposes a requirement that telecommunications carriers are 'not to install network features, functions or capabilities that do not comply with the guidelines and standards established pursuant to Section 255 or 256.'"[8] Pacific Bell believes that the

---

[8]NOI at ¶26 (citing 47 U.S.C. §251(a)(2)).

nature and extent of the Section 251(a)(2) requirements will depend on the guidelines and standards established in this docket. This much, in fact, was recognized by the Commission's *First Report and Order* in Docket No 96-98, where the Commission stated that it would be premature to attempt to delineate specific requirements or definitions of terms to implement Section 251(a)(2) because the Commission and Access Board had not yet developed standards or guidelines under Section 255. We note, however, that in the context of our proposal to require "documents of conformity" and "customer accessibility impact reports," as discussed in Section IV(B), compliance with Universal Design principles will automatically ensure that issues regarding the accessibility of features, functions, and capabilities are examined and evaluated.

3. The Interpretation of "Manufacturer" Should Contemplate Coverage of All Aspects of the Fabrication and Assembly Process

As we have previously noted, we are a strong proponent of a process-oriented approach to Section 255 compliance. The reality of the modern manufacturing world, however, is that products are no longer entirely designed and fabricated by a single company. In many cases, for both CPE and telecommunications equipment, there are subassemblies and component manufacturing processes that are integrated downstream into products that may be complete or may themselves be components. In other cases, product designs are, as the Commission has recognized, licensed to other manufacturers, sold to packagers or resellers, and even potentially modified prior to being offered for sale to a customer. If a process-oriented

compliance scheme is to work, the Commission must be able to impact all phases of the equipment manufacturing process from conception to ultimate sale.

The principle means by which the Commission can influence the equipment development process is to ensure that accessibility information is provided by all manufacturers of CPE and telecommunications products. As discussed in Section IV(B), we advocate the use of a simple Declaration of Conformity ("DOC"), in conjunction with an Customer Accessibility Impact Report ("CAIR"), to assist in ensuring that products are proactively designed with consideration of Section 255 goals. If manufacturers are required to provide documentation of the access capabilities that are and are not supported, "downstream" integrators, packagers, retailers, modifiers, and resellers can then rationally consider how their actions impact accessibility goals. If, for example, an entity modifies a subassembly in a manner that blocks access capabilities, the trail of DOCs and CAIRs will illuminate that fact and the modifier's DOC and CAIR would be required to provide details on why that modification was necessary and why maintaining access capabilities was not "readily achievable" under Section 255. This process will encourage manufacturers to seek DOCs and CAIRs from their component suppliers and make rational choices as to how component selections impact accessibility.

We recognize that, in some cases, compromises to accessibility goals will be needed in the manufacturing process. By ensuring that information on accessibility issues is documented at every stage in the process, however, the Commission can ensure that such occurrences are minimized or are the product of good faith efforts in product design to meet accessibility goals in a manner "readily achievable."

B. The Commission's Reconciliation of the ADA and Section 255 Should Recognize the Differences Between Ensuring Access and Use in an Architectural Barriers Context and the Telecommunications Context

The NOI requests comment on "how . . . elements of the ADA definition concerning a record of impairment or being regarded as having an impairment should be applied in the Section 255 context," as well as other "possible differences in the application of disability between the ADA and Section 255."

Section 255 addresses telecommunications access and usage by a wide range of users with disabilities rather than attempting to meet the needs of particular individuals. Section 255, in effect, is limited to providing functional access rather than addressing the perception of disability or record of such an impairment as it pertains to discriminatory practices. The ADA encourages employers to take into consideration individual preferences regarding accommodations. In contrast, no specific mention is made regarding individual preferences in Section 255. However, it must be inferred that a wide range of accommodations must be considered and that some accommodations may conflict. For example, a person with limited mobility may have difficulty pressing buttons and prefer speech input, but speech input would not be an effective way to provide access to a person with nonstandard speech.

It may thus be necessary to address "functional equivalence" in telecommunications as it pertains to consumers with a wide range of disabilities rather than to prescribe specific solutions for an individual with disabilities. It is more important to ensure that customers with varying disabilities are able to access telecommunications with a range of solutions, with parity in pricing and features, than to determine whether every single piece of equipment meets the

range of needs of all customers with disabilities. In any event, it may not be possible to develop equipment that can effectively meet the needs of all individuals with all disabilities. Ultimately, Pacific believes it is more effective to examine whether processes have been put into place demonstrating a good faith effort to provide functional equivalence for as wide a range of users as technologically feasible.

Especially important in this regard is the need, in evaluating functional equivalents, to ensure that the Commission's policies consider "effective communications." A customer's ability to access and use CPE, for example, is dependent upon more than simply the physical device itself. Customers' access and use needs extend to having customer service that can be accessed via TTY so that customers with hearing disabilities can communicate effectively with the company on billing problems, defective merchandise, compatibility questions, and other routine matters. At the same time, a telecommunications manufacturer may not have the ability to ensure the accuracy of technical information transcribed into Braille, but might be able to provide 24 hour technical support or audio-text information at no charge to consumers who cannot read printed material. We believe that specific recommendations regarding what constitutes "effective communications" should be developed in conjunction with the Access Board and with consideration of telecommunications companies' ability to develop and distribute alternative media.

C. ADA Definitions and Case Law Can Be Used To Determine Whether Accessibility Measures Are "Readily Achievable"

Under Section 255(c), the Commission is required to ensure services are "accessible to and usable by individuals with disabilities, if readily achievable." The language "readily achievable" is given the meaning assigned to it under Title II of the ADA. Under Section 301(9) of the ADA (42 U.S.C. §12181(9)), "readily achievable" is defined as "easily accomplishable and able to be carried out without much difficulty or expense." The section further provides that "[i]n determining whether an action is readily achievable," factors to be considered include:

> (A) the nature and cost of the action needed under this chapter;
>
> (B) the overall financial resources of the facility or facilities involved in the action; the number of persons employed at such facility; the effect on expenses and resources, or the impact otherwise of such action upon the operation of the facility;
>
> (C) the overall financial resources of the covered entity; the overall size of the business of a covered entity with respect to the number of its employees; the number, type and location of its facilities; and
>
> (D) the type of operation or operations of the covered entity, including the composition, structure, and functions of the workforce of such entity; the geographic separateness, administrative or fiscal relationship of the facility or facilities in question to the covered entity.

These definitions, and related case law, were drafted to address architectural barrier issues in the employment context, but can be adopted to apply to the telecommunications service context. For example, "the nature and cost of the action needed under this [Section],"

is a factor readily adaptable to the telecommunications context. However, because an access or use problem could have more than one potential remedial "action," assessments under this factor should also examine: (1) the cost and nature of a range of alternatives, including modifications to CPE, telecommunications equipment, services, or equipment used by individuals with disabilities; (2) whether the access problem is better addressed by equipment manufacturers or service providers; and, (3) whether the access or use problem can be solved on an individual basis or should be addressed by solutions that are more generic and that may need to be resolved by creating industry standards.

In this regard, the Commission has asked "[h]ow . . . the financial resources of firms of widely varying characteristics should be considered in a way that does not distort competitive incentives, but at the same time ensures accessibility."[9] We note, however, that if a process-oriented compliance model is adopted, as we advocate, firms should be able to address access for people with disabilities to the extent permitted by their own resources. This simplifies the process for the Commission by alleviating concerns that its enforcement of Section 255 will have competitive impacts for firms of varying sizes. We also observe, however, that distortions may result if subsidiaries are imputed the resources of their parent companies, as suggested in the NOI.[10] A subsidiary and a parent company should only be treated as a single entity for purposes of Section 255 if the subsidiary has access to the

---

[9]NOI at ¶18.

[10]NOI at ¶19.

facilities and technical, marketing, and other resources of the parent without being required by law to compensate the parent at fair market value.[11]

The factors listed under subsection (B) of Section 301(9) are intended to address the impact of implementing a proposed solution on a particular facility. In the telecommunications context, considerations under this criterion should include: (1) whether the cost of a particular action is disproportionate in terms of the cost, revenues, and utility of a service or piece of equipment; (2) the impact of implementing the modification on compatibility with related local, national, and international services and equipment;[12] (3) whether other, external modifications are needed to equipment or services not under the control of the manufacturer or service provider to achieve improved access or use; and, (4) whether the modification would cause compatibility or other technical problems with the use of the equipment or service by individuals without a particular disability or aggravate access and use problems by individuals with other types of disabilities.

The factors under subsection (C) appear to attempt to assess the impact of a proposed modification on a "covered entity." For purposes of Section 301(9), "covered entities" are the companies being requested to make a particular modification. Accordingly, considerations

---

[11]*See, e.g.*, 47 C.F.R. §§ 32.27, 64.901 (1996).

[12]The NOI also requests comment on the international marketing impact of national guidelines on access for persons with disabilities. NOI at ¶20. Pacific submits that the costs firms incur to develop services and equipment that must meet differing requirements in foreign and domestic markets should be factored into what is considered readily achievable. Work to harmonize standards internationally would help to reduce these costs, as well as potentially improving the state of access for persons with disabilities abroad. In this regard, it is also imperative that all firms, domestic and international, should be subject to the same Section 255 requirements for products and services marketed in the United States. *See* NOI at ¶11.

under this criterion would include: (1) the overall size and financial resources of a manufacturer or service provider; (2) the number and type of customers potentially affected by the access or use problem; (3) the number and type of customers of the company overall; and, (4) the geographic nature and extent of the company's operations.

The final criterion for assessing "readily achievable" appears to involve a broader assessment of the relationship between the type of access or use restriction and how that access or use restriction affects the ability of an individual with a disability to function. Accordingly, we believe the Commission should assess how a particular telecommunications access or use problem affects the ability of individuals with disabilities to communicate or benefit from the network services and equipment.

D. A Process-Oriented Approach Can Assist In Achieving "Compatibility" with Existing Peripheral Devices and Specialized CPE

Section 255(d) of the Act also directs the Commission to ensure that, if access and use measures under Section 255(c) are not "readily achievable," service providers at least "ensure that the . . . service is compatible with existing peripheral devices or specialized customer premises equipment commonly used by individuals with disabilities to achieve access, if readily achievable." Accordingly, the Commission seeks information on the extent of deployment of "existing peripheral devices" and "specialized CPE" and what should be considered "commonly used by individuals with disabilities to achieve access" to telecommunications services. The Commission also seeks comment on what, if any, compatibility requirements exist for such equipment.